

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

MARTIN SCHULTHES,

No. C-13-0712 EMC

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S  
MOTION FOR APPOINTMENT AS  
LEAD PLAINTIFF AND APPROVAL OF  
SELECTION OF COUNSEL**

NETFLIX, INC., *et al.*,

Defendants.

(Docket No. 12)

Plaintiff Martin Schulthes has filed a class action complaint, asserting a violation of the Securities Exchange Act (including Rule 10b-5) by Defendants Netflix, Inc.; Reed Hastings; and David Wells. Pursuant to the Private Securities Litigation Reform Act ("PSLRA"), Mr. Schulthes has filed a motion for appointment as lead plaintiff and approval of selection of counsel. The Court deems this matter suitable for disposition without oral argument. Having considered the papers submitted, including the supplemental briefing provided by Mr. Schulthes, the Court hereby **DENIES** the motion without prejudice.

As Mr. Schulthes concedes, under 15 U.S.C. § 78u-4(a)(3)(I), before appointment of a lead plaintiff may take place, the plaintiff must give early notice of, *inter alia*, the pendency of the action to members of the purported class "in a widely circulated national business-oriented publication or wire service." 15 U.S.C. § 78u-4(a)(3)(A)(I). Here, Mr. Schulthes gave notice via an entity by the name of *PRBuzz*. The Court ordered Mr. Schulthes to provide supplemental briefing and/or evidence to support his claim that *PRBuzz* is a widely circulated national business-oriented wire

1 service. It also asked Mr. Schulthes to identify any ruling by a federal court finding *PRBuzz* to be  
2 such a service for purposes of the PSLRA. *See* Docket No. 15 (order).

3 Mr. Schulthes filed his supplemental papers on May 31, 2013. *See* Docket No. 18  
4 (supplemental brief). In his papers, he does not identify any federal court ruling finding *PRBuzz* to  
5 be a widely circulated national business-oriented wire service. He argues, however, that *PRBuzz*  
6 constitutes such a service based on (1) claims made by *PRBuzz* on its website and (2) “a partial  
7 listing of the websites that published the notice.” Docket No. 18 (Supp. Br. at 2).

8 The Court finds this argument unavailing. Neither the claims made by *PRBuzz* on its website  
9 or the “partial listing” of websites provided by Mr. Schulthes establishes that *PRBuzz* is a *business-*  
10 *oriented* wire service, as required by the PSLRA. *Compare, e.g., Westley v. Oclaro*, No. C-11-2448  
11 EMC, 2011 U.S. Dist. LEXIS 102249, at \*3 (N.D. Cal. Sept. 12, 2011) (noting that “[m]ultiple  
12 courts have recognized Business Wire as a widely circulated national business-oriented wire  
13 service”).

14 Moreover, the claims made by *PRBuzz* on its website are either unsupported (*e.g.*, that its  
15 press releases reach thousands) or do not give any real sense of whether the investing public – or  
16 more particularly, large, experienced investors – would be likely to see the press releases made  
17 available by *PRBuzz* to its alleged partners. For instance, even if the companies listed on *PRBuzz*’s  
18 website have in the past published some of *PRBuzz*’s press releases, there is no information as to  
19 how often they have relied on *PRBuzz*.

20 As for the “partial listing” supplied by Mr. Schulthes, the Court notes that the press  
21 release/notice appears to have been distributed and picked up by fewer than forty entities.

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1 Accordingly, the Court finds that there is insufficient evidence to establish that *PRBuzz* is a  
2 widely circulated national business-oriented wire service. Because there is insufficient evidence to  
3 establish such, Mr. Schulthes's motion for appointment as lead plaintiff and approval of counsel  
4 must be denied. The denial is without prejudice.

5 This order disposes of Docket No. 12.

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7 IT IS SO ORDERED.

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9 Dated: June 10, 2013

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12 EDWARD M. CHEN  
13 United States District Judge  
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